

United States Court of Appeals

For The Eighth Circuit

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June 07, 2023

Ms. Anna O. Mohan
U.S. DEPARTMENT OF JUSTICE
Appellate Section
Room 7533
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0000

RE: 22-1104 State of Missouri, et al v. Joseph Biden, Jr., et al

Dear Counsel:

The court today issued an opinion in this case. Judgment in accordance with the opinion was also entered today.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing *en banc* must be received in the clerk's office within 45 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, no grace period for mailing is allowed. Any petition for rehearing or petition for rehearing *en banc* which is not received within the 45 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

HAG

Enclosure(s)

cc: Ms. Vinita Andrapalliylal
Mr. Zach A. Avallone
Ms. Natalie Christmas
Clerk, U.S. District Court, Eastern District of Missouri
Mr. Christian Brian Corrigan
Mr. Matthew Frederick
Mr. Anthony J. Galdieri
Ms. Gabriela Gonzalez-Araiza
Mr. Daryl L. Joseffer
Mr. Scott Allen Keller

Ms. Maria Ann Lanahan
Mr. Samuel Paul Langholz
Mr. Steven P. Lehotsky
Ms. Stephanie A. Maloney
Mr. David M. McVey
Ms. Cori Mills
Mr. David Peters
Mr. Matthew A Sagsveen
Mr. Ryan Schelhaas
Mr. Mark B. Stern

District Court/Agency Case Number(s): 4:21-cv-01300-DDN

United States Court of Appeals
For the Eighth Circuit

No. 22-1104

State of Missouri; State of Nebraska; State of Alaska; State of Arkansas;
State of Iowa; State of Montana; State of New Hampshire; State of North Dakota;
State of South Dakota; State of Wyoming

Plaintiffs - Appellees

v.

Joseph R. Biden, Jr., in his official capacity as the President of the United States of America; United States of America; The Office of Personnel Management; Kiran Ahuja, in her official capacity as director of the Office of Personnel Management and as co-chair of the Safer Federal Workforce Task Force; General Services Administration; Robin Carnahan, in her official capacity as administrator of the General Services Administration and as co-chair of the Safer Federal Workforce Task Force; Office of Management and Budget; Shalanda Young, in her official capacity as acting Director of the Office of Management and Budget and as a member of the Safer Federal Workforce Task Force; Safer Federal Workforce Task Force; Jeffrey Zients, in his official capacity as co-chair of the Safer Federal Workforce Task Force and COVID-19 Response Coordinator; Federal Acquisition Regulatory Council; Lesley A. Field, in her official capacity as Acting Administrator for Federal Procurement, Office of Management and Budget; John M. Tenaglia, in his official capacity as Principal Director of Defense Pricing and Contracting, Department of Defense; Jeffrey A. Koses, in his official capacity as Senior Procurement Executive & Deputy Chief Acquisition Officer, General Services Administration; Karla S. Jackson, in her official capacity as Assistant Administrator for Procurement, National Aeronautics and Space Administration

Defendants - Appellants

State of Florida; State of Arizona; State of Georgia; State of Idaho; State of Kansas; State of Kentucky; State of Louisiana; State of Ohio; State of Oklahoma; State of South Carolina; State of Tennessee; State of Texas; State of Utah; State of West Virginia; Chamber of Commerce of the United States of America

Amici on Behalf of Appellees

Appeal from United States District Court
for the Eastern District of Missouri

Submitted: September 21, 2022

Filed: June 7, 2023

[Unpublished]

Before SMITH, Chief Judge, KELLY and GRASZ, Circuit Judges.

PER CURIAM.

By executive order and related agency action, the President of the United States and other federal Executive Branch officials sought to contractually obligate all federal contractors and subcontractors to ensure their employees were fully vaccinated against COVID-19. *See* Executive Order 14042, 86 Fed. Reg. 50,985 (Sept. 9, 2021) (hereinafter “EO 14042”); Office of Management and Budget Notice of Determination, 86 Fed. Reg. 63418-01 (Nov. 16, 2021). The district court preliminarily enjoined the federal officials from enforcing the contractor vaccine mandate within the plaintiff States after deciding the States were likely to prevail on the merits of their claim that EO 14042 exceeded the President’s authority. The government appealed, seeking reversal of the district court’s preliminary injunction.

On May 9, 2023, the President issued an executive order revoking EO 14042, to be effective on May 12, 2023. *See* Exec. Order No. 14099 §§ 2, 3, 88 Fed. Reg. 30,891, 30,891 (May 15, 2012) (“Revocation EO”). The Revocation EO explained

that “we no longer need . . . federally specified safety protocols for Federal contractors.” *Id.* § 1. The Revocation EO further specified that “[a]gency policies adopted to implement [EO 14042] . . . , to the extent such policies are premised on th[at] order[], no longer may be enforced and shall be rescinded consistent with applicable law.” *Id.* § 2.

Based on the Revocation EO, the federal officials filed an unopposed motion to voluntarily dismiss the appeal, explaining the only relief from this court they had sought was the reversal or narrowing of the preliminary injunction barring enforcement of EO 14042. Because EO 14042 “and its accompanying guidance have been revoked” and “can no longer be enforced,” the federal officials acknowledge the purpose of their appeal “no longer exists.” We agree. As it is no longer possible to effectuate the relief requested, we conclude this appeal has become moot and dismiss it as such. The case is remanded to the district court for further proceedings consistent with this opinion.
